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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/813,251	03/20/2001	Vincent York-Leung Wong	8004	1716

27752 7590 12/17/2002

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

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DATE MAILED: 12/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/813,251

Applicant(s)

WONG ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meade (6,010,737) in view of Composition of Foods, page 112.

Meade discloses a nut spread containing defatted roasted peanuts having a fat content of from 10-40%. A defatted roasted nut flour can be used having from 10-12% fat. The solids to oil ratio is about 2.28:1 (col. 5, lines 15-55). Claims 1-3 differ from the reference in the particular ratio of protein to fat. However, The discovery of an optimum value of a result effective variable is ordinarily within the skill of the art. In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). In developing a peanut spread, properties such as amounts of fat and protein are important. It appears that the precise ingredients as well as their proportions affect the viscosity and amount of fat in the product, and thus are result effective variables, which one of ordinary skill in the art would routinely optimize. Also, Composition of Foods, discloses that nuts have a particular amount of oil in them, about a ratio of 1:2 protein to oil and that defatted peanut flour has a ratio of more than 5:1 (page 112). Therefore, it would have been obvious to use ingredients in a product with various amounts of fat and protein depending on the ratio of ingredients desired.

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Claims 4-7 require particular fiber to fat ratios. However, as in *In re Boesch*, above, it would have been within the skill of the ordinary worker to use enough fiber and oil to make a particular product. Meade discloses the use of inulin in a composition in various amounts (ex. 4 and 5). Surely, the effect of adding inulin to a peanut spread is known as shown by this reference. Therefore, it would have been obvious to vary the amounts because the use of inulin in spreads is known.

The further claims 8-13 and 19-30 require various amounts of fiber, fat and protein, which would have been within the skill of the ordinary worker to vary as in *In re Boesch* above. Therefore, it would have been obvious to use various amount of protein, fat and fiber to make the claimed product.

Claims 14-18 further require less than 20% fat. Meade discloses the use of liquid SALATRIM (trademark), which is a low calorie oil in amounts of 6%. Therefore, it would have been obvious to use the claimed amounts of fat in the composition.

Claims 31 and 32 require particular amounts of protein and 75% from nut solids. Meade discloses the use of about 47% nut solids in using defatted nuts, roasted peanuts and nut flour. Therefore, it would have been obvious to use the claimed amount of protein from nut solids.

Claims 33 - 46 require particular mono-modal particle size distributions of less than 35 microns. Meade discloses a composition containing a particle size distribution (PSD) of 75 less than 25 microns and 60 % more than 6%. Even though the PSD is not exact, the science of sizes of particle is well developed, and it would have been within the skill of the ordinary worker to make particles of the required size. The further

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particle sizes as in claims 47 and 48 are seen to have been within the skill of the ordinary worker as above. Therefore, it would have been obvious to choose whatever particle size that would have made the claimed composition.


Claims 49 and 50 require that the nut spread have a particular amount of calories of 250 to 400 per serving. As it is well known how to vary the ingredients by using low fat oil, and low fat nuts, and other low fat ingredients, it would have been within the skill of the ordinary worker to achieve a particular amount of calories for the claimed serving. Meade discloses about 125 calories per 32 grams as in claim 49. Therefore, it would have been obvious to vary the ingredients in order to achieve a particular amount of calories in the product.

The further limitations of claims 51-64 have been discussed above and are obvious for those reasons.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday, Wednesday and Friday from 9:30 to 6:00 and Tues and Thurs. from 4:30 to 10 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 3959. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1193. HP 12-9-02


HELEN PRATT
PRIMARY EXAMINER